

DEC 9 1978

MICHAEL PSIDAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-763

GLEN L. RUTHERFORD, ET AL.,
Petitioners,

V E R S U S

UNITED STATES OF AMERICA, ET AL.,
Respondents.

**On Cross-Petition for a Writ of Certiorari to
The United States Court of Appeals for
The Tenth Circuit**

**REPLY TO MEMORANDUM
FOR THE UNITED STATES IN OPPOSITION TO
PETITIONERS' CROSS-PETITION FOR
WRIT OF CERTIORARI**

KENNETH COE, of the Firm
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Oklahoma City, Oklahoma 73102
Counsel for Petitioners

December, 1978

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The Solicitor General has filed its Memorandum in Opposition to Petitioners' Cross-Petition for Writ of Certiorari based upon the untimeliness of that Cross-Petition. The Solicitor General is correct in his assertion that the Cross-Petition was filed on November 7, 1978, a period of ninety-five (95) days after Re-Hearing was denied by the Tenth Circuit Court of Appeals on August 4, 1978.

The Supreme Court has power to extend the time within which a *Cross-Petition* for Certiorari may be considered:

—*Brotherhood of Ry. and S.S. Clerks v. Florida East Coast Ry. Co.*, Certiorari granted Fla. 1965, 86 S.Ct. 615, 382 U.S. 1008, 15 L.Ed.2d 524, affirmed on the merits, 1966, 86 S.Ct. 1420, 384 U.S. 238, 16 L.Ed.2d 501;

Pierson v. Ray, Certiorari granted, Miss. 1966, 86 S.Ct. 1457, 384 U.S. 938, 16 L.Ed.2d 537, decided on the merits, 87 S.Ct. 1213, 386 U.S. 547, 18 L.Ed.2d 288.

In the above cited cases the cross-petitioners were untimely in filing their Cross-Petitions; however, the Supreme Court granted the Cross-Petitions to consider all the questions presented therein.

This is a case of great import, not only for the Plaintiff Class of Terminal Cancer Patients, but also because of the fundamental question of freedom of choice which is raised.

The Supreme Court should rule on all of the issues involved, thus finally and conclusively determining the rights of the parties.

Respectfully submitted,

KENNETH COE, of the Firm
LOONEY, NICHOLS, JOHNSON & HAYES
219 Couch Drive
Oklahoma City, Oklahoma 73102
Counsel for Petitioners

December, 1978

CERTIFICATE OF SERVICE

I, KENNETH COE, a member of the Bar of the Supreme Court of the United States, do hereby certify that Service of the foregoing Reply to Memorandum for the United States in Opposition to Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit has been made on the required parties by depositing three (3) copies of same in the United States Mail with first class postage prepaid, to each of the following: William S. Price, Assistant U. S. Attorney, Federal Court House, Oklahoma City, Okla. 73102; Eugene M. Pfeifer, Food & Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852; Julian Green, U. S. Customs Service, Regional Commissioner of Customs, 500 Dallas—Suite 1240, Houston, Tex. 77002; Wade H. McCree, Jr., Solicitor General of the United States, Washington, D.C. 20530, and Barry Grossman, Catherine G. O'Sullivan, Peter L. De La Cruz, Department of Justice, Washington, D.C. 20530, this _____ day of December, 1978.

Kenneth Coe